IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 28TH SEPTEMBER, 2007/6TH ASWINA 1929

Mat.Appeal.No. 436 of 2007()

OPGW.280/2006 of FAMILY COURT, KOTTAYAM
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PETITIONER: APPELLANTS
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1. P.E.RASEENA @ PONNI, AGED 28 YEARS,
D/O.P.H.IBRAHIM, PUTHENVEETTIL, PARATHODU P.O.,
EDAKKUNNAM VILLAGE, KANJIRAPPALLY TALUK.

2. P.H.IBRAHIM, AGED 55 YEARS,
PUTHENVEETTIL, PARATHODU P.O.,
EDAKKUNNAM VILLAGE, KANJIRAPPALLY TALUK.

3. SUBAIDA IBRAHIM, W/O P.H.IBRAHI,
PUTHENVEETTIL, PARATHODU P.O.,
EDAKKUNNAM VILLAGE, KANJIRAPPALLY TALUK.

BY ADV. SRI.V.S.AFSAL KHAN

RESPONDENTS: RESPONDENT

K.H.SALIM, AGED 36 YEARS,
S/O.HAMEED, KARICKAMPARAMBIL HOUSE, GANDHI NAGAR
HOUSING COLONY, THODUPUZHA EAST,
THODUPUZHA TALUK.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

Mat.Appeal No.436 of 2007

Dated this the 28th day of September, 2007

JUDGMENT

Harun-Ul-Rasheed,J.

The parties and the minor child Noorjahan with their relatives are present. We have interacted with the appellants, the respondent and the minor child.

2. The minor child Noorjahan was admitted on 12-6-2006 in the L.K.G. class in the Modern Public School, Kaloor and for the present academic year the minor child was again admitted in the U.K.G. class in June, 2007 and she is undergoing her studies in the said school. The parents of the minor child are living separately from 24-6-2004 and the minor child was with the mother after separation. In 2004 the respondent herein had filed O.P.(G & W)No.666/2004 for custody of the minor child. In that case on 31-3-2005 the parties had entered a compromise and on that basis a compromise decree was passed by the Family Court, Kottayam. As per the compromise the minor child was agreed to be retained in the care and custody of the mother. The father was allowed to meet the child for two hours on the 1st, 3rd and 4th Saturdays of every month. The respondent father also agreed to pay Rs.750/- per month for the maintenance of the child.

Subsequently the said arrangement was modified whereby the child was allowed to stay with the father on every second Saturday and the following Sunday.

3. The present application for custody of the child was filed by the father. The Family Court, Kottayam allowed the petition and the custody of the child Noorjahan was given to the father subject to the right of the mother to have custody of the child for two days in a month, ie. the second Saturday and the next Sunday.

4. After considering the facts and circumstances of the case and after talking to the parents of the child we are of the view in the interest and welfare of the child that the child shall be allowed to be in the custody of the mother so that the child can continue her studies without any interruption. The mother shall pay special attention to her studies in the Modern Public School, Kaloor, Kochi. The father can take the child during the first half of Onam, Christmas vacations ie. for five days each and during Summer vacation for first 30 days and after the period he shall return the child to the residence of the mother. The respondent has also agreed that he shall continue to pay Rs.750/- per month towards the maintenance of the child. The father is also permitted to take the child on the second Saturday of every month from the residence of the mother. He shall entrust the child with the

mother on the next day. If on any second Saturday the child is not keeping well, it will be open to the father to collect the child on the third Saturday after the school hours and entrust the child on the next day with the mother. It is made clear that the father shall collect the child from the residence of the mother and to entrust the child to the residence of the mother.

The Matrimonial Appeal is disposed of as above.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

ahg.